No. 14,252

IN THE

United States Court of Appeals

For the Ninth Circuit

LENG MAY MA, *Appellant,* vs. BRUCE G. BARBER, District Director Immigration and Naturalization Service, San Francisco District, *Appellee.*	

BRIEF FOR APPELLANT.

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JURISDICTIONAL STATEMENT.

On January 26, 1954 there was filed in the United States District Court for the Northern District of California, Southern Division, on behalf of Leng May Ma, hereinafter referred to as appellant, a petition for a writ of habeas corpus (T. 3). The petition for writ of habeas corpus was denied on the ground that it failed to state facts sufficient to warrant the writ (T. 8). Notice of appeal was filed on January 29, 1954 (T. 8).

Jurisdiction of the District Court to entertain the petition for habeas corpus is conferred by 28 USC

2241 et seq. Jurisdiction of the Court of Appeals to review the District Court's final order denying the writ of habeas corpus is conferred by 28 USCA 2253.

STATUTE INVOLVED.

Title 8 USCA 1253.

> "Withholding of deportation.
> (h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason. June 27, 1952, c. 477, Title II, ch. 5, Sec. 243, 66 Stat. 212."

STATEMENT OF THE CASE.

Appellant was born in China in August of 1938. She claims to have acquired United States citizenship at the time of birth, pursuant to the provisions of Section 1993, United States Revised Statutes, as amended by the Act of May 26, 1934. After issuance of a travel affidavit by the American Consulate General at Hong Kong, on March 22, 1951, the appellant proceeded to the United States, arriving at the Port of San Francisco, California on May 4, 1951. After extensive hearings conducted by the Immigration and Naturalization Service, it was concluded that the ap-

pellant had failed to establish her claim. The decision of the Immigration and Naturalization Service was affirmed by the Board of Immigration Appeals on December 3, 1953.

Pursuant to a demand directed to appellant by the San Francisco District Office of the Immigration and Naturalization Service, she surrendered for contemplated deportation to Communist China on or about January 15, 1954. Under date of January 18, 1953, there was submitted on behalf of appellant to the District Director, Immigration and Naturalization Service, San Francisco, California, in accordance with prescribed regulations, an application for a stay of deportation under the provisions of Section 243(h) of the Immigration and Nationality Act of 1952. On January 21, 1954, the San Francisco Office of the Immigration and Naturalization Service advised counsel for appellant that the appellant was not eligible for the relief requested (Exhibit A, attached to the petition; T. 7).

At the time the petition for writ of habeas corpus was filed in the case at bar, deportation to Communist China was imminent. In the petition it was alleged that the appellant was denied due process of law, that her deportation to Communist China was contrary to law and the expression of Congress not to deport a person to a country where such person would suffer physical persecution and that the decision of the Immigration and Naturalization Service rejecting the application for stay of deportation was an abuse of discretion.

SUMMARY OF ISSUES AND LEGAL ARGUMENT.

The refusal of the Immigration and Naturalization Service to give any consideration to the petition filed by appellant seeking a stay of deportation on physical persecution grounds was contrary to law; that the action of the Service was based upon an erroneous interpretation of the statute; and that the appellant is one entitled to the relief afforded by the provisions of Section 1253(h), Title 8.

ARGUMENT.

The Supreme Court of the United States, in a number of decisions over a long period of time, has consistently held that habeas corpus is available in a proper case as a remedy against unlawful deportation from the United States.

United States v. Sing Tuck, 194 U.S. 161, 48 L. Ed. 917, 24 S. Ct. 621;

Bilokumsky v. Tod, 263 U.S. 149, 68 L. Ed. 221, 44 S. Ct. 54;

Heikkila v. Barber, 345 U.S. 229, 97 L. Ed. 972, 978, 73 S. Ct. 972.

The immigration administrative decision is subject to judicial review where the proceedings have not conformed to the traditional standards of fairness required by the due process of law clause of the Fifth Amendment to the Constitution of the United States. *Japanese Immigrant Case,* 189 U.S. 86, 47 L. Ed. 721,

725, 23 S. Ct. 611; *Vajtauer v. Commissioner of Immigration,* 273 U.S. 103, 71 L. Ed. 560, 563, 47 S. Ct. 302; *Wong Yang Sung v. McGrath,* 339 U.S. 33, 94 L. Ed. 616, 628, 70 S. Ct. 445; *Kwong Hai Chew v. Colding,* 344 U.S. 590, 97 L. Ed. 576, 584, 73 S. Ct. 472. Or where there has been arbitrariness or abuse of discretion by the administrative agency. *Low Wah Suey v. Backus,* 225 U.S. 460, 56 L. Ed. 1165, 1167, 32 S. Ct. 734; *Kwock Jan Fat,* 253 U.S. 464, 64 L. Ed. 1010, 1014, 40 S. Ct. 566; *Carlson v. Landon,* 342 U.S. 524, 96 L. Ed. 547, 558, 72 S. Ct. 525; *Yaris v. Esperdy,* 202 F. 2d 109, 112. The same general rule applies to determine whether or not the law has been correctly applied. *Gegiow v. Uhl,* 239 U.S. 3, 60 L. Ed. 114, 118, 36 S. Ct. 2; *Kessler v. Strecker,* 307 U.S. 22, 83 L. Ed. 1082, 1090, 59 S. Ct. 694; *Bridges v. Wixon,* 326 U.S. 135, 89 L. Ed. 2103, 2116, 65 S. Ct. 1443; *Fong Haw Tan v. Phelan,* 333 U.S. 6, 92 L. Ed. 433, 436, 68 S. Ct. 374. Cf. *McGrath v. Kristensen,* 340 U.S. 162, 95 L. Ed. 173, 181, 71 S. Ct. 224.

We have amply defined by the cases cited the power of the Courts to protect the rights of individuals in conformity with the fundamental principles of justice as embraced within the concepts of the Constitution of this nation. Quaere, applying those standards to the case at bar does the appellant's petition state a cause of action?

The petition was the only pleading filed in this cause. Thus, it becomes material to examine the allegations of the petition for the purpose of ascertaining whether a cause of action was stated of which a

Federal Court could take cognizance. For the purpose of this review the averments contained therein must be treated as true. *House v. Mayo,* 324 U.S. 42, 89 L. Ed. 739, 65 S. Ct. 517.

The appellant filed with the appropriate office of the Immigration and Naturalization Service a verified application praying for a stay of deportation as prescribed by the provisions of 8 C.F.R. 243.3(h) on the ground that she would be subject to physical persecution if deported to Communist China. The Immigration and Naturalization Service refused to grant a stay of deportation on the ground that the appellant was not eligible for the relief afforded by Section 243(h) of the Immigration and Nationality Act.

Even though the letter of the Immigration and Naturalization Service, Exhibit A of the pleadings, does not expressly set forth the basis for the rejection of the appellant's petition for a stay of deportation it must be presumed from the statements that the service relies upon the statutory construction previously asserted in the cases of *Ng Lin Chong v. McGrath* and *Wong Lai King v. McGrath,* 202 F. 2d 316. In the *Ng* and *Wong* cases, the Immigration Service contended that Section 20 of the Immigration Act of February 5, 1917, as amended, was not applicable to an excluded alien who had been paroled and bonded into the United States. Instead, it was declared that these cases were governed by Section 18 of the same Act. The Court of Appeals for the District of Columbia ruled adversely to the government on both contentions.

The petition in the case at bar presents an actual controversy between the appellant and the immigration officials over the legal right of the appellant to apply for such stay of deportation. Accordingly, the beneficial provisions of that part were denied this appellant contrary to law.

We think the logical reasoning of the Court of Appeals for the District of Columbia in the *Ng* and *Wong* cases should be applied to the instant matter. We readily admit that such decision was predicated upon construction of Sections 18 and 20 of the Immigration Act of 1917, as amended. We also recognize the rule that issuance of a writ of habeas corpus must be determined by the statute in force at the time the petition is filed. *United States v. Shaughnessy,* 185 F. 2d 347, 349; *United States v. Shaughnessy,* 187 F. 2d 137, 142, aff'd sub nom, *Harisiades v. Shaughnessy,* 342 U.S. 580.

The pertinent provisions of Sections 18 and 20 were not substantially modified by Public Law 414, 82nd Congress, 2nd Session, 66 Stat. 163, the Immigration and Nationality Act of 1952. A comparison of the language of Sections 18 and 20 of the Act of 1917 to the pertinent provisions of Sections 237 and 243 are contained in the appendix attached hereto (8 USCA 154, 156, 1227, 1253).

The Board of Special Inquiry which heard appellant's case at the time of her arrival in 1951 has power, only, to "determine whether an alien who has been duly held shall be allowed to land or *shall be deported*" (Sec. 17, Act of 1917; 8 USCA 153). "De-

portation" includes "exclusion"—*Knauff v. McGrath,* 181 F. 2d 839. This Court has held that "deportation" is the removal, or *sending back,* of an alien to the country whence he came. *Yonijuro Makasuji v. Seager,* 73 F. 2d 37; 12 Words and Phrases Perm. Ed., page 136.

The appellant was ordered excluded by a Board of Special Inquiry convened pursuant to the provisions of Section 17, Immigration Act of 1917 (8 USCA 153); and that Board determined that the appellant should be deported. No hearing was ever held under the provisions of the Immigration and Nationality Act.

The provisions of Section 237 of the Immigration and Nationality Act (8 USCA 1227) are restricted to an alien "who is excluded under *this Act*" and who is "immediately deported to the country whence he came." Since the appellant was neither "excluded" under the provisions of that Act nor "immediately deported, it is obvious that that section is not applicable.

Section 243 of that Act (8 USCA 1253) specifically provides for the deportation of any alien whether his removal be under the provisions of that Act *"or any other Act."* It is under the provisions of this same section that the appellant filed her petition for a stay of deportation on physical persecution grounds. If it is established that her deportation must be effected under the provisions of this section, how can it be logically concluded that she is not eligible even to file for the relief requested.

In *Ng Fung Ho v. White,* 259 U.S. 276, 285, 66 L. Ed 938, Justice Brandeis said that deportation

> "May result also in *loss of both property and life;* or of all that makes life worth living." (Emphasis supplied.)

In *Wong Yang Sung v. McGrath,* supra, Justice Jackson, in a case involving a Chinese seaman who had deserted his vessel, said:

> "A deportation hearing involves issues basic to human liberty and happiness and, in the present upheavals in lands to which aliens may be returned, perhaps to *life itself."* (Emphasis supplied.)

The drastic nature of the penalty of deportation has been noted in many other cases, and the strictness with which the law must be construed against the Government and in favor of the alien is observed from the Court's pronouncement in *Fong Haw Tan v. Phelan,* supra. That case involved a Chinese who had been convicted of two murders, committed simultaneously, and sentenced to life imprisonment for each offense; the Attorney General sought to deport him under Section 20 of the 1917 Act, as one who had been "sentenced more than once." In holding that, of two possible constructions of the deportation statute, the one favoring the alien must be adopted, the Court said:

> "We resolve the doubts in favor of that constructian because deportation is a drastic measure and at times the equivalent of banishment or exile, Delgadillo v. Carmichael, 332 U.S. 388, ante, 17,

> 58 S. Ct. 10. It is the forfeiture for misconduct of a resident in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

Any contention that exclusion does not lead to deportation is as erroneous as it is unrealistic. At the time of filing the petition for a writ of habeas corpus deportation of this appellant to Communist China was imminent. We assert, with reasonable justification, that this appellant would suffer physical persecution and probable loss of life as a result of such arbitrary and capricious administrative action.

The Attorney General, through the Commissioner, Immigration and Naturalization Service, decided, when considering an application for adjustment of status under the Displaced Persons Act of 1948, that a Chinese temporarily in the United States as a student cannot be deported to Communist China because of "persecution or fear of persecution on account of race, religion or political opinions," Interim Decision No. 212, in the Matter of T. C., File No. A 6 730 648, decided November 7, 1950, Immigration and Naturalization Service "Monthly Review," January 1951, Vol. VIII No. 7, pp. 95-98. In that case, summing up his findings relative to the communistic nature of the de facto government of China, the Commissioner said:

"In summation, then, it will be concluded that the de facto Government of China is Communistic, and as Communistic as the Government of Russia and the countries behind the Iron Curtain."

* * * * * * *

"Fear to Return: The applicant's testimony above relative to displacement based upon his fear of persecution will be utilized to establish that other cardinal eligibility requisite, namely, that the applicant is unable to return to the country of his birth, nationality, or last residence, because of persecution or fear of persecution on account of his race, religion or political opinions. His testimony with respect to his opposition to Communism, and the acknowledgement that China is at this time a Communist-dominated country establishes that the applicant is unable to return to China because of his fear of persecution on account of his political opinions."

It is a matter of common knowledge that China has been wholly overrun by the armed forces of the Chinese Communists; that the recognized government of the Republic of China fled to Formosa; that the principles of the Chinese Communist Government are contradictory to the principles of free and democratic government; and that the Communists have engaged in a campaign of mass murder of Chinese for vaguely defined "crimes", and that the Communist press in China, itself, puts the number of executions in excess of a million.[1] It is equally common knowl-

[1]"Reds Digesting China," by Marguerite Higgins, Washington Post, October 1, 1951.

edge that the Communists are ruling China by mass murder.[2]

In a release dated February 23, 1954, Washington, D.C., the House Appropriations Committee stated that Walter S. Robertson, Assistant Secretary of State for Far Eastern Affairs testified Red Chinese have slaughtered about 15,000,000 of their own people since 1949 which showed "just about the bloodiest pattern that the Communists have followed in any country in the world."

In view of these known conditions there can be no room for doubt that appellant would be the likely object of the Communist regime.

The United Nations, through the persistent efforts of the United States, refused for a period of approximately two years to mediate the Korean situ-

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[2]"They're Ruling China by Mass Murder," Saturday Evening Post, October 13, 1951, p. 31; at page 167, the author points out that under the most intense suspicion, and consequent danger of extermination, are Chinese "individuals who once worked for or associated with Europeans, *particularly Americans,*" and that "in a majority of cases Chinese are arrested not because they commit some overt act against the state, but because they belong to classes or categories distrusted by the communists and suspected of harboring dangerous (unorthodox) thoughts. They are sources of *potential* opposition to the regime." (Emphasis supplied.)

The United Nations General Assembly was informed November 12, 1951, that there would be no lasting peace with Red China, in Korea, or elsewhere, so long as China is dominated by "the Communist rule of mass murder"—Washington Times-Herald, November 13, 1951, page 1. Dr. T. F. Tsiang, the Chinese representative before the U. N. General Assembly, stated official announcements by Chinese Communist authorities admitted that 1,176,000 so-called counter-revolutionaries had been liquidated from October 1, 1949 to October 1, 1950, in the provinces of China, including that from which appellant originally came.

ation unless all parties agreed that captured Chinese Communist soldiers would not be repatriated to Communist China against their wishes. During this period, this nation, alone, sustained 25,000 casualties. Let's hope that these members of our armed forces did not suffer in vain.

Return of any individual despite his objection to a Communist-dominated country would be flatly inconsistent with the principle adhered to in the Korean prisoner of war negotiations. Deportation of the appellant to Communist tyranny would stultify our national policy of protecting those who have fled Communist opposition and make mockery of our national efforts to win over world opinion for the cause of freedom.

This Court in *Carmichael v. Delaney,* 170 F.2d 239, at page 245, stated:

> "Throughout history banishment or exile has been looked upon as a penalty little less dreadful than death. To one in appellee's situation, exclusion is in substance and practical effect the equivalent of banishment. It involves the same severance from home and existing ties that the individual suffers who is expelled from the country in a proceeding to deport. There is no difference in their loss of freedom of movement or in the nature of the hardships they are called upon to undergo. *The sole distinction resides in the mere matter of nomenclature.* The distinction, we think, is of no moment so far as concerns the constitutional guaranty of due process of law." (Emphasis supplied.)

The statute in effect at the time of filing this petition required the Attorney General to consider and exercise his discretion consistent "with the fundamental principles of justice embraced within the conception of due process of law." *Tang Tung v. Edsell,* 223 U.S. 673, 56 L.Ed. 606, 610, 32 S.Ct. 569; *Joint Anti-Fascist Refugee Comm. v. McGrath,* 341 U.S. 123, 95 L.Ed. 817, 71 S.Ct. 624; *Carlson v. Landon,* 342 U.S. 524, 96 L.Ed. 547, 72 S.Ct. 525.

In *Stack v. Boyle,* 342 U.S. 1, 96 L.Ed. 317, Mr. Chief Justice Vinson warned that we should not "inject into our own system of government the very principles of totalitarianism which Congress was seeking to guard against in passing the statute." This warning is particularly appropriate in the setting of the instant case. The Attorney General, through his administrative officers, arbitrarily and without just cause, condemned the appellant to probable execution.

It is well realized that this Court in *Jew Sing v. Barber,* 215 F.2d 906, sustained the position of the District Director of the Immigration and Naturalization Service. However, it should be noted that certiorari was granted in the case of *Jew Sing v. Barber,* 348 U.S. 910, and that the decision of the Court of Appeals for the Ninth Circuit was reversed with instructions that the case be remanded to the District Court for dismissal on the suggestion of mootness, 350 U.S. 898. We would also like to call attention of the Court to the decision of the Court of Appeals for the District of Columbia in *Lim Fong v. Brownell,* 215 F.2d 683, in which case that Court reached an

opposite conclusion. Also compare *U. S. v. Shaughnessy,* 234 F.2d 715.

The Fifth Amendment to the Constitution of the United States provides that "no person shall * * * be deprived of life, liberty, or property, without due process of law." We assert that there was an invasion of that constitutional right by the Immigration and Naturalization Service.

It is within the province of the Courts to test the validity of oppressive administrative action in a habeas corpus proceeding. This action was brought for that specific purpose.

CONCLUSION.

To prevent abuse of the Attorney General's extraordinary powers over the lives and destinies of our foreign born, judicial intervention is appropriate herein. The fate of the appellate is at stake.

Congress as recently as August 7, 1953, when enacting the Refugee Relief Act of 1953, recognized that it was impossible for people instilled with democratic philosophy to live in Communist dominated countries. It was the purpose and intent of Section 1253(h), Title 8, to prevent, for humanitarian reasons, deportation of worthy aliens who would suffer physical persecution.

The appellant was ordered excluded and deported and the contemplated action of the Immigration Service is deportation. Such deportation is included within

the statutory language of the provisions of Section 1253(h). Failure of the Immigration and Naturalization Service to consider the appellant's verified petition filed pursuant to the provisions of that part was a denial of a vital right guaranteed by the Constitution and laws of our nation. The failure of the Court below to consider this problem was error.

The decision should be reversed with instructions that the writ of habeas corpus issue.

Dated, San Francisco, California,
October 26, 1956.

Respectfully submitted,
JACKSON & HERTOGS,
By JOSEPH S. HERTOGS,
Attorneys for Appellant.

(Appendix Follows.)

Appendix.

Appendix

Section 18—Act of February 5, 1917, 8 U.S.C.A. 154.

"Immediate deportation of aliens brought in in violation of law; cost of maintenance and return.

All aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Attorney General immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. It shall be unlawful for any master purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the

Section 237, Immigration and Nationality Act, 8 U.S.C.A. 1227.

"Immediate deportation of aliens excluded from admission or entering in violation of law —maintenance expenses.

(a) Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported to the country whence he came, in accommodations of the same class in which he arrived, on the vessel or aircraft bringing him, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, as well as the transportation expense of his deportation from the United States, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except * * *

Unlawful practice of transportation lines.

(b) It shall be unlawful for any master, commanding offi-

cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; * * *"

cer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman), ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the airport of arrival of the aircraft when required by this chapter or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country whence he came; (4) to fail to pay the cost of his maintenance while being detained as required by this section or section 1223 of this title; (5) to take any fee, deposit, or consideration on a contingent basis to *ke*[1] kept or returned in case the alien is landed or excluded; * * *"

[1]So in original. Probably should read "be".

Section 20, Act of February 5, 1917, 8 U.S.C.A. 156.

"Ports to which aliens to be deported, cost of deportation.

The deportation of aliens provided for in this chapter shall, at the option of the Attorney General, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or, if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which thy resided prior to entering the country from which they entered the United States. * * *"

Section 23 of the Internal Security Act of 1950 (Public Law 831, 81st Cong., 2d Sess.; 64 Stat.) 8 U.S.C.A. 156, amended Section 20 of the Immigration Act of February 5, 1917 so as to read, in pertinent part, as follows:

"Sec. 20(a) That the deportation of aliens provided for in this Act and all other immigration laws of the United States shall be directed by the Attorney General to the country specified by the alien, if it is willing to accept him into its territory; otherwise such deportation shall be directed by the Attorney General within his discretion and without priority of preference because of their order as herein set forth, either to the country from which such alien last entered the United States or to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory; or to any country in which he resided prior to entering the country from which he entered the United States or to the country which had sovereignty over the birthplace of the alien at the time of his birth; or to any coun-

Section 243 of the Immigration and Nationality Act, 8 U.S.C.A. (effective December 24, 1952).

"Countries to which aliens shall be deported—Acceptance by designated country; deportation upon nonacceptance by country.

(a) The deportation of an alien in the United States provided for in this chapter, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. * * * Thereupon deportation of such alien shall be directed to any country of which such alien is a subject[1] national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particu-

[1]So in original. Probably should read with a ",".

try of which such an alien is a subject, national, or citizen; or to the country in which he was born; or to the country in which the place of his birth is situated at the time he is ordered deported; or, if deportation to any of the said foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory. * * * No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subjected to physical persecution."

lar case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either— * * *.

Withholding of deportation.

(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."